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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA

5 v.

12 CR 876 (ALC)

6 PAUL CEGLIA

7 Defendant

8 -----x

9 New York, N.Y.
10 October 23, 2014
11 10:30 a.m.

12 Before:

13 HON. ANDREW L. CARTER, JR.
14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 JANIS ECHENBERG
20 NIKETH VELAMOOR
21 Assistant United States Attorney

22 LAW OFFICE OF ROBERT R. FOGG
23 Attorneys for Defendant

24 ROBERT R. FOGG
25 GIL MESSINA
TIMOTHY MAY

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(In open court; case called)

THE DEPUTY CLERK: Criminal cause for a status conference in the number United States versus Paul Ceglia counsel please state your appearance. For the government.

MS. ECHENBERG: Good morning, your Honor Janis Echenberg for the government. With me at counsel table is Nick Velamoor from my office and Ann Marcullino, who is an intern in our office.

THE DEPUTY CLERK: For the defendant.

MR. FOGG: Good morning, your Honor. Robert Ross Fogg for Mr. Paul Ceglia who is on the telephone line. Next to me co-counsel Gil Messina, and Timothy May.

THE COURT: Good morning.

I have before me several motions. Primarily it is a motion for the disclosure of certain documents from Mr. Ceglia--

Mr. Ceglia, are you on the phone? Can you hear us?

THE DEFENDANT: I can, your Honor.

THE COURT: -- for certain documents from Mr. Ceglia's former attorneys in the civil matter.

I have reviewed everything. I did have a few questions. First of all, there is also a motion to strike the reply that has been filed by the defendant. I will deny the motion to strike the reply. Again, I can disregard whatever it is I need to disregard in this case, and I will strike the

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1 motion to reply.

2 I have some questions. Regarding the documents in
3 question, my understanding is a walled-off AUSA has possession
4 of these documents. Can I just get some further elucidation as
5 to how this walled-off AUSA came into possession of these
6 documents?

7 MR. VELAMOOR: Certainly, your Honor. I am the
8 walled-off AUSA who has possession of these documents.

9 I have taken possession of them following essentially
10 discussions between counsel. At that time it was Mr. Ceglia's
11 former counsel from Federal Defenders, Mr. Patton. There was
12 email correspondence on how to proceed with respect to these
13 documents that were possession of the law firms.

14 Mr. Patton and counsel for the law firms agreed that
15 these documents would come to me, and only to me, so that I
16 could review them and, if necessary, engage in whatever
17 litigation was necessary to resolve issues with respect to
18 those documents.

19 So, following those discussions, counsel from these
20 law firms produced the documents directly to me with no copy to
21 Ms. Echenberg or any of the other counsel who are actually
22 involved in prosecuting the matter.

23 I have the documents. They are available to me on a
24 database that only I have access to and only I have access in
25 our office.

EanQcegC

1 THE COURT: Thank you.

2 Let me hear from defense counsel regarding this. My
3 understanding is defense counsel takes some issue with the way
4 these documents were given to the walled-off AUSA?

5 MR. FOGG: Yes, Judge, we do.

6 First of all, whenever there is a crime fraud
7 exception application that is put forth to the court, documents
8 are not transferred to a wall or anyone else, a pseudo-wall or
9 whatever. Usually the documents will sit with each other's
10 party until we discuss this, and the documents would actually
11 be forwarded to your Honor for your review or your Honor would
12 place them someplace other than someone that the U.S.
13 Attorney's office selects -- the prosecutor, the adversary.

14 Counsel made mention of an email that was an
15 agreement. I have actually sought this agreement. I haven't
16 received any agreement. This is the first time I heard there
17 was an email agreement. If I heard it incorrectly, please
18 correct me. However, I heard there was an email discussion
19 where Mr. Patton agreed to transfer these documents.

20 The problem with that is that based on my discussions
21 with my client, Paul Ceglia, that discussion with him has never
22 occurred. Based on my prior discussions with Mr. Patton, I
23 have never received an indication that my client actually had
24 that communication. So, therefore there was no consent by
25 Mr. Ceglia to transfer any documents over to anyone for any

EanQcegC

1 purpose, nor would he allow such a thing.

2 THE COURT: If that is the case, what is it you would
3 like me to do about that?

4 MR. FOGG: Well, first, Judge, I want the documents
5 back, all of them.

6 Second, Judge, I don't believe that the crime fraud
7 exception application would be permissible at this time because
8 all documents that were forwarded over that they base their
9 application upon have been done so without my client's consent.

10 THE COURT: What do you mean? Forgetting the
11 documents, let's assume for the sake of argument that the
12 walled-off AUSA has actually done what the walled-off AUSA is
13 supposed to do and hasn't shared any of the actual documents
14 with the AUSAs who are prosecuting this case; but just in terms
15 of the privilege log, which is what I have been looking at, are
16 you saying that looking at the privilege log would be
17 inappropriate in terms of determining whether or not the crime
18 fraud exception does apply or might apply?

19 MR. FOGG: Well, Judge, I believe counsel for the
20 government has actually admitted or at least conceded and
21 actually stated that these are documents that are privileged.
22 They are, but there is a breach of privilege here because the
23 breach occurs when counsel without consent of my client
24 transfers them to a third party, whether it be a wall or
25 someone else; without consent of my client.

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1 THE COURT: Other than wanting the documents back,
2 what would you be asking me to do about that? Let's just
3 assume arguendo that I were today or at some point to find that
4 the crime fraud exception applies to certain of those documents
5 which I have not seen yet, but to certain documents. The fact
6 that you claim these documents were turned over to a walled-off
7 AUSA without your client's consent would have what consequence?

8 MR. FOGG: Well, considering that this walled-off AUSA
9 is actually in the U.S. Attorney's office, and for
10 clarification of my client, is sitting right at the front table
11 shoulder to shoulder with the attorney for the U.S. Attorney's
12 office, is part of the U.S. Attorney's office. This is some
13 sort of pseudo-separation of ideas and concepts in their
14 office.

15 My suggestion, Judge, return those documents to us and
16 have another person appointed to actually receive them for the
17 purposes of the Court or simply if the Court determines later
18 on at some other time that the crime fraud exception does apply
19 and this Court determines that this court needs to review these
20 documents, then we give it straight to you, your Honor,
21 straight to your court.

22 THE COURT: Other than the means of transmitting these
23 documents to me, if I determine that the crime fraud exception
24 might apply, what else, if anything, would you be asking for as
25 a result of this?

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1 MR. FOGG: Well, I would ask that you strike their
2 request; that you deny their request for the application based
3 on this breach of confidentiality.

4 THE COURT: What basis would I have to do that?

5 MR. FOGG: Well, Judge, the crime fraud exception came
6 about after -- their application came about after they received
7 this information. Based on the receipt of this information,
8 then they made their application. Had they not had that
9 information from the beginning or not been able to receive it,
10 they may not have made that application. I don't know that for
11 a fact, but I would say based on the facts that we see today,
12 documents are handed over. Now they make the application.

13 THE COURT: Does the government have any response to
14 that?

15 MR. VELAMOOR: I actually have several responses, your
16 Honor. First of all, in terms of the procedure, I am not
17 familiar with the procedure that Mr. Fogg described. We did
18 what I understand to be customary in this district. Mr. Patton
19 is very familiar, I think, to this Court, both your Honor's
20 court and all the other courts in this district. If there is
21 any reason to believe he acted inappropriately in any way, we
22 operated in the way that we often operate in circumstances like
23 this with a walled AUSA. So I really don't understand what the
24 problem is with respect to that.

25 We have not cited a single of the documents in support

EanQcegC

1 of our application. The Court knows that. So I am not sure
2 why there is any issue with respect to that. We are not
3 relying on the substance of any of these documents in pursuit
4 of our motion.

5 In terms of the defendant's knowledge, again, I think
6 this is an issue, frankly, between defendant and his counsel.
7 I don't think it changes the substance or the merits of the
8 motion in any way. I would note parenthetically that we looked
9 at some transcripts from prior court conferences. Of course I
10 was not present at these court conferences, but I believe
11 during these conferences, the general procedure that we were
12 pursuing was discussed at these conferences earlier -- I guess
13 last year, in June and September of 2013. So it was, frankly,
14 surprising to us that it was surprising to Mr. Ceglia. It's
15 been part of the case that's been discussed.

16 THE COURT: OK. Thank you. Hold on a second. I will
17 be back. Just give me a moment.

18 (Pause)

19 THE COURT: Sorry. Just wanted to discuss something
20 with my law clerk briefly.

21 Let's move on to the crime fraud exception. I see I
22 have seen the parties' submissions on this. Let me hear
23 briefly from each side as to why they feel the crime fraud
24 exception does or does not apply or might apply.

25 I guess at the outset, defense counsel in the briefs

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1 spent a large portion of the brief talking about why these
2 communications were privileged or the subject of work product.
3 I don't think there is any dispute about that.

4 Let's just move on to the issue of the crime fraud
5 exception and why the parties feel that it applies or doesn't
6 apply starting with counsel for the government

7 MR. VELAMOOR: Yes, your Honor. As we set forth in
8 our motion, we think the standard here is straightforward. As
9 the Court knows, we need to establish that there is probable
10 cause and to believe that a crime of fraud has been attempted
11 or committed and that the communications we're seeking were in
12 furtherance of that crime.

13 We think in this particular case that there were
14 numerous findings by other courts and other entities of
15 probable cause that a crime was committed, specifically that
16 the defendants attempted to fraud Mr. Zuckerberg and Facebook,
17 and there also have been findings, I think it's quite clear in
18 the record, that this lawsuit was a central part of that fraud
19 and it was pursued for the purpose of achieving this fraud.

20 So I think this is a circumstance, this is a case --
21 it's an unusual case, but it happens to be a case that fits, I
22 think, precisely within the scope of what the crime fraud
23 exception applies to.

24 THE COURT: Thank you.

25 Let me hear from defense counsel.

EanQcegC

MR. FOGG: Yes, your Honor.

Your Honor, the crime fraud exception does not apply. Now, they say that there is probable cause to establish the crime fraud exception applies. What they are actually referring to, your Honor, is a probable cause standard that is set out in their briefs that basically lays out that a prudent person would have a reasonable basis to suspect the perpetration of a crime or fraud and that the communication were in furtherance thereof. All that to prove probable cause to lead to the crime or fraud was attempted or committed and that the communications were in furtherance of.

Now, they cite several different cases. All of these cases that they cite do not pertain to the issues at hand. A civil lawsuit is the basis of this wire and mail fraud case. No cases have that except for one. Now, with that one case, it is *In Re: Richard Roe*.

Now, *In Re: Richard Roe* was very, very much on point. They cited it through and they gave this Court preamble within their motions. Out of 17 pages, only two pages apply that are directly on point. What they do not tell you, Judge, is they cite *In Re: Roe* 68 F. 3d 40.

The problem is *In Re: Richard Roe* was a case that was brought to the Court of Appeals, and then it was remanded back to the court, the trial court with instructions. That's *In Re: Roe I*. *In Re: Roe II* came back to the Court of Appeals and

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1 they set out a specific standard that actually meets this case.
2 It parallels this case.

3 What they keep citing is *In Re: Richard Roe* 68 F. 3d
4 38, that is *Roe I.* That was October 13, 1995. They say they
5 cited another one, which is 94, which is even one before that.
6 But the last case was *In Re: Richard Roe, Inc.*, 168 F 3d 69.
7 That was February 3, 1999. In that case, the court analyzed
8 the government's theory, and stated that the government's
9 theory was that the act of defending the lawsuit in question,
10 it says here, except Mr. Ceglia is prosecuting the lawsuit, as
11 itself being in furtherance of the fraud. Now that was the
12 government's theory there.

13 The government's theory here is Mr. Ceglia prosecuting
14 a civil lawsuit, and that is the fraud. And everything
15 afterwards was in furtherance of the fraud.

16 Now, the court then went on to -- state, and your
17 Honor, you can read this -- but it states that the government's
18 theory would collapse in two-part test for the crime fraud
19 exception establishing the one if as the government argues
20 there is probable cause that a fraud has been committed, that
21 consists at least partially of engaging in litigation, then
22 probable cause would arguably exist to find that every document
23 prepared in connection with the defense of that litigation was
24 in furtherance of the fraud and therefore not privileged.

25 Now, what this court went on to say is the standard,

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1 and the standard is probable cause that the litigation or an
2 aspect thereof, had little or no legal or factual basis, and
3 was carried on substantially for the purpose of furthering the
4 crime of fraud. That is the standard to be applied. It is not
5 the reasonableness. That's the Second Circuit, that's here.
6 That's the law of our land. That's the law of this case.

7 So if that's the case, Judge, they would have to
8 establish that there is no legal or factual basis for the case
9 itself. That's why in our motion we submitted to your Honor
10 the experts: The experts that say the ink matched; the pages
11 matched; it comes from the same trees; that the staples go
12 through the same holes through the first page and second page;
13 and when the staples come back, they create an indentation
14 under the second page which is reflected on the first page.
15 They compared the year of the ink. They compared all of these
16 things to show that, well, there is a legal basis here.

17 The government says one contract is a fraud. We say
18 it's not. That's a triable issue of fact. That's a triable
19 issue of fact. So, therefore, they cannot show that there is
20 no legal or factual basis for this. And if they do, Judge,
21 then I request a probable cause hearing because now what
22 they're doing is they are pulling up cases, they're pulling up
23 decisions from other courts just to bog the issue down to
24 prejudice this court.

25 Well, two judges in Buffalo have decided. Well, those

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1 are currently under appeal. Well, there was a complaint, and
2 the judge issued a warrant on that to establish probable cause.
3 No. That happens in every case. Well, the grand jury indicted
4 the case. Well, that happens in every case. But now as we
5 move to dismiss, the court says, if I could reflect back to a
6 prior date before me, the court says to Mr. Ceglia, well, show
7 me a case, a criminal case, that is on point.

8 They have not done that. I have just done this. I
9 just did this. What we've got is we've got a criminal case,
10 but now it's their burden to prove probable cause, so show a
11 criminal case in this circuit right on point. Well, there is
12 one: *In Re: Richard Roe, Roe II*, that's right on point. And
13 for them to establish this basis, they have to establish
14 probable cause beyond what they just simply thought or what
15 they simply told you.

16 So the other issue that I see, Judge, is that there is
17 a recent lawsuit concerning these attorneys that they're
18 seeking the information from. They have not been noticed here.
19 They haven't been given an opportunity to actually put up their
20 objections. Because if we actually release these documents,
21 then you've released documents that could adversely affect the
22 attorneys on a pending case.

23 Just recently Mr. Ceglia has sued several attorneys,
24 quite a few of them -- Facebook. Excuse me. Facebook has sued
25 several attorneys, Facebook, Inc. and Mark Elliot Zuckerberg

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1 has sued DL Piper. That's one of the law offices. That's one
2 information. They should be here. They should have a right to
3 say. And this court shouldn't turn that information over
4 because it will be prejudicial to their case as well.

5 Your Honor, what they point to in their case, they got
6 the indictment, they got a complaint, a decision from two
7 judges in Buffalo. They say those things to establish probable
8 cause, but they haven't forwarded any probable cause at all,
9 none.

10 By virtue of the fact that those issues were already
11 decided, Judge, three judges have already made a decision, how
12 could you go against three judges? Allowing this information,
13 Judge, you are going to have to make an issue as to the triable
14 issue of this case. They are saying the contract is a fraud.
15 Your Honor, you are going to have to decide whether this
16 contract is a fraud before we even get to a trial. And if
17 Mr. Ceglia is cloaked in the presumption of innocence, then we
18 are just stripping that away from him.

19 THE COURT: Why is it you say that I have to determine
20 whether or not this contract is fraudulent? And by what
21 standard are you talking about? You keep talking about triable
22 issues of fact. It seems to me that you are wanting me to make
23 some sort of pretrial determination beyond a reasonable doubt
24 or beyond any sort of doubt that this is -- I am not going to
25 be the ultimate trier of fact of this matter. The issue is

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1 probable cause. You have experts who say one thing about that
2 contract. The government has experts who will say something
3 else. You say this is a triable issue of fact. I agree, it is
4 a triable issue of fact, a triable issue of fact really doesn't
5 mean a whole lot in the criminal context.

6 In the civil context, that could mean it would be
7 inappropriate to impose some sort of summary judgment but that
8 has nothing to do with whether there is probable cause. The
9 standard here is probable cause, whether or not there is
10 probable cause to believe that a fraud has been committed. I
11 understand your position is that a fraud has not been
12 committed, and that the contract is genuine, and that is
13 something that it seems to me ultimately needs to be decided by
14 a jury, by a standard of beyond a reasonable doubt. It seems
15 that you are inviting me to make the ultimate determination in
16 this case, which is inappropriate for me to do, and it's not my
17 real.

18 My role at this point in terms of dealing with this
19 crime fraud exception is just to determine whether or not based
20 on the information before me, there is probable cause to
21 believe that a crime has been committed as a result of this,
22 and, particularly, a fraudulent crime, wire fraud, mail fraud
23 and the like, by the government's theory is that the initiation
24 of this entire lawsuit was fraudulent.

25 Obviously you disagree with that, but it seems to me

EanQcegC

1 that at a minimum -- well, you won't concede -- but at a
2 minimum it seems to me that I am not sure how you can dispute
3 that at a minimum there is probable cause regarding the
4 contract regarding this issuance of the contract.

5 I know you believe that the contract is genuine. You
6 have experts who believe that the contract is genuine and the
7 jury will decide -- let me rephrase this. The jury will not
8 decide whether or not the contract is actually genuine. The
9 jury will decide whether or not the government has proven its
10 case beyond a reasonable doubt.

11 But I want to hear more from you as to why there is
12 not probable cause, which is a much lower standard than what it
13 seems to me that you are inviting me to apply here.

14 MR. FOGG: Well, Judge, I do not invite, I do not
15 attempt, nor do I in any way try to suggest that I am asking
16 this Court to invade the province of some jury that will decide
17 the issue beyond a reasonable doubt. That is not what I am
18 doing.

19 What I am simply saying is in order to get to the
20 standard which was set by *In Re: Richard Roe*, and that standard
21 is clear that the litigation or any aspect thereof had little,
22 even no legal or factual basis, the litigation itself. So,
23 therefore, they would have to establish that Mr. Ceglia when he
24 initiated his civil lawsuit -- now this is the probable cause
25 burden -- *In Re: Richard Roe*, they have to establish that it

EanQcegC

1 had no legitimate basis; that it was baseless. That is
2 something they have to establish.

3 They haven't done that here. They haven't established
4 that; that the actual litigation brought forth by Mr. Ceglia
5 had no basis whatsoever. Well, how do you do that? They have
6 experts, experts that can't even determine -- can't make a
7 determination, can't come to a conclusion on the contract that
8 they believe is correct.

9 We have experts that says that the contract that
10 Mr. Ceglia has is genuine, is authentic. They have experts,
11 and I believe -- now this is an issue that I need clarity on.
12 There are two pages. One page was actually signed by
13 Mr. Zuckerberg. Is it the government's position today that
14 Mr. Zuckerberg signed that second page? That's a question I
15 have.

16 THE COURT: Before we get to that question, let me
17 just ask you this: Hypothetically speaking, if the contract in
18 question had been altered and if Mr. Ceglia altered that
19 contract, would you then not concede that there is probable
20 cause to believe that -- forget probable cause.

21 If the contract is altered and had been altered by
22 Mr. Ceglia, would you not concede that at least a part of that
23 litigation was baseless if that were true? Wouldn't that mean
24 that a part of that litigation at a minimum was baseless?

25 MR. FOGG: I don't want to concur with you, Judge.

EanQcegC

1 THE COURT: I'm not saying that you agree with that
2 factually, but I'm saying assuming arguendo that Mr. Ceglia
3 altered that contract and then tried to collect a money
4 judgment based on an altered contract, wouldn't you concede
5 that at least, if that were true -- I'm not saying it is
6 true -- but if that were true, at a minimum that portion of the
7 litigation would be baseless, correct?

8 MR. FOGG: I would say if he attempted to collect a
9 money judgment, yes. But there is no attempt to collect a
10 money judgment. There is only attempt to bring a lawsuit, and
11 under *Noerr-Pennington* --

12 THE DEFENDANT: Your Honor --

13 THE COURT: Hold on. Hold on. Even forgetting the
14 money judgment, that would still be baseless if there is still
15 a claim that what has been altered, what is false is true,
16 that's baseless, correct?

17 MR. FOGG: I would agree, Judge.

18 THE COURT: And that would certainly lead to an
19 inference that the entire litigation was baseless, correct?

20 MR. FOGG: I would say no, Judge. I wouldn't say that
21 the entire litigation --

22 THE COURT: Let's say it wouldn't prove it, but that
23 would lead to an inference. Again, we are talking about
24 probable cause here. I am not that saying any of these things
25 are definitively true one way or another, but it seems to me

EanQcegC

1 that I have probable cause to believe that a crime has been
2 committed, and I have probable cause before me based on what
3 the government has submitted, based on the complaint, based on
4 the indictment, forgetting the decisions of other judges in
5 another district, but just based on the indictment and the
6 complaint and the other information submitted by the
7 government, it seems I have probable cause to believe that a
8 crime has been committed.

9 Certainly the grand jury felt there was probable cause
10 that a crime has committed because they indicted Mr. Ceglia.
11 But it seems to me that I have probable cause to believe that a
12 crime has been committed and that a fraud has been committed,
13 and that there is probable cause. That does not mean that
14 Mr. Ceglia is guilty of this crime. That does not mean that
15 the government will be able to prove Mr. Ceglia's guilt beyond
16 a reasonable doubt, but it does seem to me that based on what I
17 have, and you have these other arguments to the contrary, that
18 there is probable cause. But let me hear from you a little bit
19 more on this, counsel, if you have anything else.

20 I am inclined to believe -- let me tell you where I am
21 leading. I obviously agree with you in terms of the legal
22 standard that you laid out. I don't think that the government
23 was trying to go with a different legal standard, but that
24 legal standard that was set out in *Jacobs* and in *Roe* is that in
25 order for the crime fraud exception to apply, as the Second

EanQcegC

1 Circuit laid out in *United v. Jacobs*, the government must
2 demonstrate that there is a factual basis for a showing of
3 probable cause to believe that a fraud or crime has been
4 committed, and that the communications in question were in
5 furtherance of the fraud or crime.

6 I believe that I have a factual basis that the
7 government has demonstrated for a showing of probable cause to
8 believe that a fraud or crime has been committed.

9 As to the second part, that I do not have yet. It
10 seems to me that it would be appropriate for me to conduct an
11 in camera review because the fact that there is probable cause
12 to believe that a fraud or crime has been committed does not
13 mean that all of the documents that are mentioned are subject
14 to the crime fraud exception, or that any of the documents that
15 have been admitted are subject to the crime fraud exception.

16 MR. FOGG: Exactly.

17 THE COURT: That second part still needs to be shown
18 that the communications were in furtherance of the fraud or
19 crime, and that I don't believe I have in front of me yet.
20 That is why I think it would be appropriate for me to conduct
21 an in camera review. Let me give defense counsel another
22 opportunity to be heard. That is where I am leading. I will
23 give you another opportunity to be heard on this.

24 It seems pretty clear that the first part of the crime
25 fraud exception has been met. As to the second part, it seems

EanQcegC

1 to me that I would be required to conduct an in camera review
2 to make sure that these communications and questions were
3 intended to further the commission of that crime and that they
4 were intended to facilitate or conceal the crime. That I
5 cannot do based on a privilege log. I actually have to look at
6 the communications.

7 But go ahead, Counsel.

8 MR. FOGG: Well, Judge, the second part, like I said,
9 if it was borne out of the litigation, the whole concept of
10 crime fraud exception two-part test would collapse because
11 every case that they bring forth would always be supported by
12 probable cause because of an indictment, probable cause because
13 of a complaint. So, as in *In Re: Richard Roe* says is that the
14 theory actually collapses the two-part test.

15 Now, I know your Honor states that the court believes
16 that there is probable cause, at least in part. So, therefore,
17 I disagree. I take objection and I take exception to that,
18 Judge.

19 However, Judge, going on to the second part of the
20 test, the second part of the test is, yes, they have to
21 demonstrate there is some communication. There is no
22 communication for which they have demonstrated, as the Court
23 amply stated. And then they are asking for this enormous
24 amount of all, all communications whatsoever. They need to be
25 able to point to something specific other than the fact that

EanQcegC

1 they have already charged Mr. Ceglia with mail fraud, wire
2 fraud.

3 THE COURT: Thank you.

4 Again, it seems to me too your point -- and I don't
5 want to belabor this too much longer -- but *Richard Roe*, that
6 case is very different from this case. It is one thing to
7 defend a civil lawsuit when you are hauled into court and you
8 are defending yourself in a civil lawsuit versus the allegation
9 here that Mr. Ceglia initiated a lawsuit based on a fraud,
10 initiated a fraudulent lawsuit as a plaintiff. There is an
11 entirely different sort of actual scenario that we are talking
12 about here. Let's leave it at that.

13 That is certainly very distinguishable, but as you may
14 have gathered from what I said before, I am not inclined to
15 turn over all of these documents to the government. I am
16 inclined to conduct a lengthy, rigorous, in camera review of
17 all of these documents to determine whether the second prong of
18 the crime fraud exception applies.

19 If the second prong does not apply to any of those
20 documents, then none of those documents would be turned over.
21 If it applies to some, then some. If it applies to all, then
22 all.

23 That's where I'm leading. Go ahead, counsel.

24 MR. FOGG: Judge, I apologize, these cases have
25 similarities and differences. From this point we have not had

EanQcegC

1 a criminal case from the circuit that actually addressed civil
2 litigation, whether it's defending or prosecution. We have a
3 case.

4 So basically the analogy is, it is litigation. The
5 crime which was mail and wire fraud that this gentlemen was
6 brought in on, yes. It's the same as here. It's all based on
7 civil litigation. That is a direct analogy. However, it is
8 true there are differences. One, Mr. Ceglia is prosecuted. *In*
9 *Re: Roe*, he was a defendant. And that's true. We accept that.
10 However, we've gotten a lot closest to an analogous case than
11 we had before.

12 THE COURT: Thank you.

13 Let me hear from the government.

14 MR. VELAMOOR: I don't plan on discussing the content
15 of any emails, but I will say briefly, I agree that the *Roe*
16 case is relevant. I also agree that the distinction the Court
17 just drew about prosecuting a case as opposed to defending a
18 case is also very important. I think that difference benefits
19 the government's position in this case, because I think that
20 *Roe* contemplates that in this instance where the act of
21 litigating is part of a fraud, the implication of that is that
22 all the documents get turned over because that implies that the
23 attorney/client relationship was pursued in order to achieve a
24 fraudulent result.

25 What *Roe* did not do was then narrow its focus of what

EanQcegC

1 the government could get as a result of that. They acknowledge
2 that in the instance where the act of litigating is part of the
3 fraud, the likely result of that is all the documents are going
4 to get turned over.

5 So, in that instance, it is important then to make
6 sure there is no factual basis. At least there's probable
7 cause if there is no factual basis. I think that's what we've
8 shown.

9 So, again, I don't believe the cases require us, for
10 example, to establish that the substance of any document or any
11 communication itself includes false statements or includes
12 fraudulent statements or otherwise. I think what we are
13 required to show is Mr. Ceglia pursued this relationship, this
14 attorney/client relationship for the purpose of achieving a
15 fraud.

16 To take another example, the *Jacobs* case for example,
17 the Court decides in *Jacobs* that the defendant was pursuing a
18 fraud and then agrees to turn over to the government an opinion
19 letter written entirely by an innocent lawyer about how such a
20 business could or could not be carried out because I think the
21 court decided in that particular case that the defendant
22 approached the lower with the intent to achieve a fraudulent
23 result and his communications with the attorney were part of
24 the course of conduct of that fraud.

25 While I certainly understand the Court believes the

EanQcegC

1 need to establish both prongs, we believe the Court needs to
2 establish both prongs. Our position here though is that in
3 this particular instance where the probable cause demonstrates
4 the defendant hired counsel, initiated a lawsuit after crafting
5 fraudulent documents in order to achieve a fraudulent result.
6 This whole attorney/client relationship I think is in
7 furtherance of a fraud. That's why we believe that in this
8 particular case under these circumstances, that's what the
9 scope of the order should ultimately be. That is why in this
10 particular case we felt it was appropriate to describe what we
11 were seeking in that manner.

12 THE COURT: Give me a little bit more on that from the
13 government. What is your definition of "in furtherance" then?
14 It seems me your definition is obviously a lot broader than
15 what the Second Circuit's definition is, but let me hear from
16 you as to what your definition of "in furtherance" means.

17 MR. VELAMOOR: I think we need to demonstrate that the
18 defendant in this instance pursued an attorney/client
19 relationship and engaged in communications with a lawyer as
20 part of an attempt to achieve a fraud. Again, it can't be the
21 case, I think, based on the decisions that have been made that
22 we would only get access to specific documents that in and of
23 themselves create or include false statements by the defendant.
24 If that were true, for example, the *Jacobs* case wouldn't make
25 any sense. In *Jacobs*, the whole issue was turning over an

EanQcegC

1 opinion letter written by an innocent lawyer. And the court
2 said because the defendant's intent in pursuing that
3 attorney/client relationship and in obtaining that advice from
4 the lawyer, because the defendant's intent was to achieve a
5 fraud, that that letter gets turned over to the government even
6 though nothing on the face of that letter was even written by
7 the defendant. Nothing on the face of that letter included any
8 false statements or would have included anything to suggest
9 that the lawyer was involved in the fraud or any such thing.

10 THE COURT: I agree -- and I'm sorry if I misled you
11 into thinking this -- that certainly the case law is clear it
12 is not about the lawyer's intent or whether or not the lawyer
13 was duped in some way by the client. And I am certainly not
14 indicating, or I didn't mean to indicate, that the government
15 would be restricted to if they are going to get any of these
16 documents to only documents that are false on their face.

17 But the standard as laid out in *Roe* is that the
18 government must show that the particular communication with
19 counsel or attorney work product was intended in some way to
20 facilitate or conceal the criminal activity. That is what the
21 standard is. That is the standard that I will apply.

22 So it is not a matter of whether or not the document
23 is false on its face or whether or not it's apparent from the
24 document that the attorney knew what was going on. It's about
25 whether or not that particular statement or that particular

EanQcegC

1 document, whatever it is, that particular communication was
2 intended to further the criminal activity, and the Second
3 Circuit has gone on to define that as intending to facilitate
4 or conceal the criminal activity.

5 MR. VELAMOOR: I think we agree with that. Certainly
6 we don't disagree with the Second Circuit. I think our point
7 though is that in this particular instance the issue here is a
8 unique one, but the issue here is that the defendant has
9 initiated a lawsuit as part of a fraudulent act.

10 I can't conceive of a way in which any of these
11 documents would be saved from the crime fraud exception because
12 without talking about any of the substance of any of the
13 documents because this is a defective attorney/client
14 relationship from its inception. This is an attorney/client
15 relationship that was started and pursued for the purpose of
16 achieving a fraudulent result. That is not something that the
17 attorney-client privilege would in any way protect.

18 We are not, for example, seeking the defendant's
19 attorney/client communications with respect to his injunction
20 lawsuit to enjoin these individuals Preet Bharara and
21 Ms. Echenberg from pursuing the case. We are not seeking those
22 communications. We are not seeking, obviously, the defendant's
23 current communications with his current counsel.

24 What we are saying is that the lawsuit he pursued with
25 the law firms of Kasowitz and DL Piper, he hired them to file a

EanQcegC

1 fraudulent lawsuit. So I think these are not attorney/client
2 communications that the privilege exists to protect.

3 So, I guess all I am suggesting is -- and I am not to
4 preview what the Court will decide. We can't envision an
5 instance in which any of these documents would be saved from
6 the crime fraud exception given the nature and circumstances of
7 this lawsuit.

8 THE COURT: Again, the way I read the case is that I
9 am required to conduct a rigorous inquiry to make sure that any
10 document that gets turned over satisfies the requirements as
11 laid out in the Second Circuit. So I understand your position
12 that it should be all the documents. I have to look at them
13 all. It may end up that it's all the documents. It may end up
14 that it is none of the documents, but I have to look at them
15 all.

16 So it is going to take me some time to do that. I
17 believe there are around 1,700 documents. Is that correct?

18 MR. VELAMOOR: I can confer with your Honor's
19 chambers. I have them in like a concordance database. That's
20 how they're available to me. I have some on paper and some in
21 a concordance database. I will have to in fact devise a way to
22 provide those over to you or I can ask the law firms to produce
23 them directly open to the court. I am open to any way you
24 choose.

25 THE COURT: Anything from defense counsel on this? I

EanQcegC

1 am going to need to go through these documents. It is going to
2 take me some time to do that. Does the defense counsel have
3 any position as to how I should receive these documents or from
4 whom?

5 MR. FOGG: Judge, I don't have a position at this
6 present time. However, I would like at least for myself to
7 review the documents if they have them before they are passed
8 on to your Honor.

9 THE COURT: Does the government have a position on
10 that?

11 MR. VELAMOOR: They should have them. When they were
12 given to me, they were also given to Mr. Patton. He was copied
13 on all the correspondence.

14 MR. FOGG: Are we talking about the logs themselves
15 and not the contents of the cited emails themselves?

16 MR. VELAMOOR: We are talking -- I am talking about
17 the contents.

18 THE COURT: He's talking before the contents.
19 Counsel, you indicated you have those contents in what
20 form?

21 MR. VELAMOOR: From one of the law firms, I have them
22 actually on paper. From the other law firm that has more of
23 them, I have them, or at least I access them when I do, in a
24 concordance database. They were received electronically.

25 THE COURT: It seems to me that it is appropriate

EanQcegC

1 certainly for the defense to review those documents as well.

2 Defense counsel should make efforts to try to get
3 those documents if you can from prior defense counsel. If not,
4 please reach out to the government, and I'd ask the government
5 to make those documents or I ask the walled-off AUSA to make
6 those documents available to defense counsel and then provide
7 them to me.

8 MR. VELAMoor: I will, your Honor.

9 THE COURT: I am not sure why it would be necessary
10 for the defense to have them before me, but again, it is going
11 to take me some time to do it.

12 Let me get a sense from defense counsel, why is it you
13 want to have them potentially before me? I am ordering that
14 you get them. You should have them.

15 The whole purpose of the walled-off AUSA is so that
16 the AUSAs who are prosecuting this case don't get those
17 documents. If your goal is to go through all of that and then
18 submit something to me regarding certain communications, I
19 suppose that's fine, but that would need to be done in a vague
20 enough way so that it does not reveal the content of those
21 documents to the AUSA who are prosecuting this case.

22 MR. FOGG: Judge, any method that will facilitate this
23 Court's goal in reviewing them would be fine. I believe we can
24 get copies.

25 THE COURT: Let's have the government provide --

EanQcegC

MR. FOGG: Simultaneously would be fine.

THE COURT: -- these documents simultaneously.

Can we get them by Monday? Is that possible?

MR. VELAMOOR: I think it should be possible. I may have to confer with some of the technical people in how to provide that, but I don't think that should be a problem.

THE COURT: Let's say Wednesday then to be safe. Wednesday of next week, which is what day, Tara?

THE DEPUTY CLERK: 29TH.

THE COURT: I would need about 60 days probably to go through all of these documents and make the appropriate rulings regarding any and/or all of these documents.

So let's get adjourned date for perhaps -- 60 days is going to get us right around the holidays. Let's find out what else we have to do. I understand that defense counsel, the last time we were here, was indicating a desire to file a motion to dismiss the indictment.

Now, your prior defense counsel had filed a motion to dismiss to the documents based on *Noerr-Pennington* and the like. I don't think it is necessary for me to go through that analysis again. If that is your basis to dismiss the indictment, that objection has been noted. Is there any other basis by which you seek to dismiss the indictment here?

MR. FOGG: Well, Judge, I believe maybe we can just set some sort of pretrial discovery dates so they get completed

EanQcegC

1 and then that would be it, and for responses and the like.

2 THE COURT: Responses to what?

3 MR. FOGG: To any pretrial discovery motions that
4 defense makes with regard to our submissions.

5 THE COURT: Does the government have any objection
6 position on this?

7 MS. ECHENBERG: Yes, your Honor.

8 Defense counsel, prior counsel was given multiple
9 opportunities to make motions. As you may remember, he wanted
10 to do it in a sort of rolling fashion, so he wanted to first
11 make the motion to dismiss the indictment, wait to see what the
12 result of that was, and then he was given the opportunity to
13 make more motions, which he did.

14 I don't think because the defendant has decided to
15 retain new counsel two years into this case he should have the
16 opportunity to reopen all motions again. We've already had
17 significant delay in this case. He's had ample opportunity to
18 make motions. So we would oppose the reopening of a motion
19 schedule.

20 There are also just a few housekeeping matters that I
21 wanted to put on the record.

22 THE COURT: Before we get to that, my understanding is
23 defense counsel indicated he doesn't plan to file a motion; he
24 just wishes to sort out the remaining discovery if there is
25 any. My understanding is that discovery had been complete

EanQcegC

1 before in this case.

2 MS. ECHENBERG: That was one of the housekeeping
3 matters I wanted to put on record. That is correct. We have
4 produced significant discovery to prior counsel. He stated on
5 the record at the last conference a month ago that he intended
6 to Fed Ex all of that discovery to new counsel that week. I
7 conferred with Mr. Fogg before the conference began. He
8 confirmed that he has received that package from Mr. Patton.
9 So it is my understanding from Mr. Fogg and Mr. Patton's
10 statement that all discovery has now been transmitted to
11 Mr. Fogg.

12 THE COURT: OK. Thank you.

13 Defense counsel, do you have all the discovery that
14 has been provided by prior counsel?

15 MR. FOGG: I received discovery from prior counsel.
16 Whether or not there was something missing, lacking, I can't
17 say at this present time. However, I did receive that. Judge,
18 my intention was to file motions. However, as soon as I came
19 on the case on the morning of the 16th, we were faced with this
20 crime fraud exception we which we had to address.

21 THE COURT: What sort of motions are you
22 contemplating?

23 MR. FOGG: Judge, there are several issues that I saw
24 within the case itself. Number one, Judge, I believe we are
25 going to address the subpoena issue in and of itself. I

EanQcegC

1 thought we were going to address that today. And that would
2 have been some formal basis of a motion that I was going to
3 file, but I understand we will -- am I correct?

4 THE COURT: No, we'll deal with that at a future date,
5 but go ahead. In terms of the motion, the subpoena, we are
6 going to address that.

7 MR. FOGG: Today.

8 THE COURT: Yes. What else?

9 MR. FOGG: There are other motions with regard to a
10 Daubert challenge that we are going to seek. Again, Judge,
11 there was a motion for failure is to state a cause of action
12 which again may be the motion to dismiss. However, I'm trying
13 not to rehash the prior attorneys arguments --

14 THE COURT: Give me a sense of what is appropriate
15 here so it I condition determine whether it is appropriate to
16 give you leave to file the motion. What are we talking about
17 in terms of the motion to dismiss the indictment? What are we
18 talking about here?

19 MR. FOGG: As I see it, Judge, the indictment at least
20 as it's written --

21 THE COURT: Let me clarify that. What is there that
22 you wish to raise, if anything, regarding the motion to dismiss
23 the indictment that was not previously raised by prior counsel?

24 MR. FOGG: Honestly, Judge, I need time to figure that
25 one out. I don't know exactly because what I have been doing

EanQcegC

1 is preparing for this crime fraud exception, which has taken me
2 a little off track here.

3 However, what I would like to do is file some motions,
4 if the Court would just give us a date and if the Court will
5 then either grant or deny. Because I don't believe the Court
6 has set a date for the filing of motions. I may be wrong only
7 because I've come in afterwards, but I don't believe the Court
8 has set a date. Am I correct?

9 THE COURT: We had had prior counsel, who had been on
10 this case for quite some time -- we had a trial date. The
11 trial was supposed to start, I think, actually next month,
12 actually about a week or two from now. We adjourned the trial
13 date because new counsel was here.

14 I am not going to rehash all of those other issues
15 again. If there is some compelling reason you have to file a
16 motion, I would certainly like to hear it. I don't just want
17 to set a motion schedule, some sort of omnibus motion schedule
18 without having a sense what the motions are because I think
19 many of these things may have been covered by prior counsel.

20 THE DEFENDANT: Your Honor?

21 THE COURT: Tell me what kind of motions we're talking
22 about. You've told me a motion to dismiss the indictment. I
23 have already ruled on that. If there is some other ground that
24 wasn't raised by prior counsel, fine. Any other motions, a
25 Daubert hearing, that's fine. Give me a sense of what we are

EanQcegC

1 talking about, so I can know when to schedule this, where to
2 schedule it and if we should schedule it. Give me a sense of
3 what we're talking about.

4 MR. FOGG: Judge, if I may ask, I could refer back to
5 this court within a couple days and let the Judge and counsel
6 know exactly what I'm looking for.

7 THE DEFENDANT: May I have a few minutes to talk with
8 my attorney off of the speaker phone?

9 THE COURT: Yes. Hold on a second. We will give
10 counsel a tune to speak to his client. I will step aside for
11 just a second. Let's try to make it brief.

12 (Recess)

13 THE COURT: We are back. Mr. Ceglia, can you hear me.

14 THE DEFENDANT: Yes, I can, your Honor. Thank you.

15 THE COURT: We gave Mr. Ceglia, just so the record is
16 complete, an opportunity to speak privately with his attorney
17 by telephone.

18 counsel?

19 MR. FOGG: Judge, if I may, I don't know if on the
20 record I misspoke, but I wanted the Court to be clear that I
21 don't concede that the contract or any contract or the civil
22 suit was baseless. I don't concede that.

23 THE COURT: That's very clear. There is no dispute
24 that you don't concede that and I am not saying that that has
25 been proven beyond a reasonable doubt. I'm saying there is

EanQcegC

1 probable cause to believe that.

2 MR. FOGG: My client wanted me to remind the court
3 that there are cashed checks which in and of itself demonstrate
4 there is an agreement. These are cashed checks which have
5 never been disputed. So, therefore, even if there was some
6 sort of change in the contract despite that, there is a
7 legitimate agreement that was founded here which just takes it
8 out of the realm of being baseless at all and is actually quite
9 legitimate.

10 THE COURT: Thank you. I still find there is probable
11 cause.

12 Let's do this: Let me hear from the parties regarding
13 where we are with the subpoena situation. Actually, counsel
14 for the government, there were some other housekeeping matters
15 you wanted to address?

16 MS. ECHENBERG: Just one other matter, your Honor.
17 There was discussion at the last conference about releasing
18 certain properties from the bail order. That has basically
19 been taken care of. I provided by email previously, but I
20 provided signed notarized copies of the release of lien in
21 person to Mr. Fogg today. I wanted to put that on the record.

22 I also wanted to note that I will send by email later
23 today a discovery index. I believe Mr. Patton provided that as
24 well, but I will send that to Mr. Fogg to be sure that he can
25 check against the index to be sure that he has everything.

EanQcegC

1 THE COURT: Thank you.

2 Where are we in terms -- I think we have resolved many
3 of the issues regarding subpoenas. Where are we regarding
4 that?

5 MS. ECHENBERG: Your Honor, I thought that was
6 resolved, but I know that Gibson Dunn had turned over the
7 portions that they were required and were volunteering to turn
8 over. I know that that has occurred. I believe that our
9 office was in the process of turning things over. I spoke to
10 them shortly after the conference, and they were going to
11 provide a copy to the government as well, which now that I'm
12 thinking about it, I am not sure we received but, I can confirm
13 that.

14 THE COURT: Counsel anything else on the subpoena
15 issue?

16 MR. FOGG: In looking over the subpoenas that were
17 issued previously with regard to Facebook and Mr. Zuckerberg,
18 they do take on a larger than scale request. I have drafted up
19 a subpoena and request that is more scaled down and limited and
20 very specific.

21 A. Now, in my affidavit I state forth a certain bails is for
22 that, and that is based on an item that was found in the
23 discovery pages on pages. It's an email from Mr. Zuckerberg
24 actually giving us a hint that there is another contract that
25 he himself created and passed on to my client.

EanQcegC

1 THE COURT: Hold on just one second.

2 (Pause)

3 THE COURT: Go ahead, counsel.

4 MR. FOGG: Yes, Judge, because of the nature of the
5 confidentiality of the document, I'd rather not go into greater
6 detail with that. However, Judge, I would like to submit that
7 for the Court's review and pass it on to client and counsel
8 with regard to my request for contracts and agreements, whether
9 proposed or contemplated, in any form that Mr. Zuckerberg may
10 have wherever they may reside. It is more specific in my
11 request, Judge.

12 THE COURT: What is it you want to do?

13 MR. FOGG: Well, I would like to submit to the Court
14 an order for a subpoena with regard to certain information that
15 all his email attachments, his contracts, whether they're
16 drafts, whether they're emails, whether they're attachments --
17 apparently there is a contract out there. There are several
18 versions of a contract out there. And the attachment will
19 demonstrate that.

20 THE COURT: I'm just curious, when was this subpoena
21 drafted?

22 MR. FOGG: When was this subpoena drafted?

23 THE COURT: Yes.

24 MR. FOGG: I did it this morning, Judge.

25 THE COURT: All right. That's fine. You can submit

EanQcegC

1 it to me. We have a trial date. I would like to move things
2 along. It is helpful if you submit stuff earlier so that I
3 have a chance to look at it and make decisions on these things;
4 but let me just hear from the government regarding this.

5 MS. ECHENBERG: Your Honor, this is the first time I'm
6 hearing of it, so of course I would like an opportunity to
7 review it and respond, if necessary. It sounds from the
8 description as though it's overlapping significantly with what
9 has already been requested and possibly with already what's
10 been produced by Gibson & Dunn, but I will have to look at it
11 more closely.

12 THE COURT: That is fine. I will do that. I will
13 give the government to -- why don't we do this: Give the
14 parties an opportunity to meet and confer about the subpoena
15 and give the government an opportunity to respond if they like.
16 Then let's have a status conference sometime next month to be
17 sure we keep everything on track, since defense counsel has
18 indicated since the last conference he has been consumed by
19 this issue of the crime fraud exception. Defense counsel can
20 certainly take this time to figure out if there are any motions
21 you wish to file. If so, what they might be so that I can make
22 a determination -- I am not inclined to grant the filing of any
23 motions, but I may be depending on what it is. I just need to
24 have a sense of what we're talking about.

25 MR. FOGG: Yes, Judge.

EanQcegC

1 THE COURT: Let's do that. And we can discuss this
2 other issue of the subpoena sometime next month, as well as
3 come back here relatively quickly. Can we get a date sometime
4 around the middle of November, Tara? Maybe earlier that
5 Thanksgiving week, that Monday or Tuesday.

6 THE DEPUTY CLERK: Monday, November 24 at 10:00 a.m.

7 THE COURT: Does that date and time work for everyone?

8 MS. ECHENBERG: It's fine for the government.

9 MR. FOGG: 10:00 a.m.?

10 THE COURT: Yes.

11 MR. FOGG: Judge, I will have to make that work.

12 Judge, if I may, before we proceed on?

13 THE COURT: Yes.

14 MR. FOGG: I needed clarification, as I stated before,
15 there is a transcript from 7/22, Judge, where there was
16 discussions as to the signature on page 2, and I would like to
17 know if that is Mr. Zuckerberg's signature.

18 THE COURT: Is the government in a position to -- does
19 the government want to answer that on the record? Does the
20 government want to answer that privately? Where are we with
21 this? I think we had -- I don't remember the answer to that
22 question, but I'm pretty sure we had clarification of that at
23 that conference but let me hear from the government.

24 MS. ECHENBERG: Again, your Honor, this is the first
25 time hearing this. I would obviously like to review the

EanQcegC

1 transcript and have a little more context what defense is
2 asking for.

3 THE COURT: Let me find out defense counsel. Have you
4 asked the government this question before today.

5 MR. FOGG: Well, Judge, as I was reading through the
6 transcript, it stated that --

7 THE COURT: I understand, but have you asked the
8 government this question.

9 MR. FOGG: I have not asked them specifically this
10 question.

11 THE COURT: So I will give you a chance to meet and
12 confer with the government and see what the answer to that is.
13 If they don't answer the question or there is something that
14 you are not satisfied with, we will deal with that on
15 November 24.

16 Anything else from the government today?

17 MS. ECHENBERG: No, your Honor.

18 THE COURT: Anything else from the defense today?

19 MR. FOGG: Just a minute, Judge.

20 (Pause)

21 MR. FOGG: Judge that will be it.

22 THE COURT: So, again, I believe I have excluded time
23 under the Speedy Trial Act until the trial date.

24 To the extent that I have not, just to be on the safe
25 side, I will exclude time from today's date until November 21

EanQcegC

1 under the Speedy Trial Act. I find it is in the interest of
2 Mr. Ceglia and the interest of justice to exclude time under
3 the Speedy Trial Act so that defense counsel may continue to
4 review the discovery and prepare for trial and so that the --
5 that is primarily the reason.

6 The court will also need time to review the documents
7 that have been turned over to make a determination as to
8 whether or not any of these documents satisfy the crime fraud
9 exception but primarily so that the defense can prepare for
10 trial and determine whether or not defense counsel wishes to
11 file any motions. I further find the interest of Mr. Ceglia
12 and the interest of justice outweigh the public's interest in a
13 speedy trial and I will enter a report to that effect.

14 Again, from today's date until November 24. I may have
15 said the 21st. Anything else? Again, I find the interest of
16 Mr. Ceglia and the interest of justice outweigh the interest of
17 the public in a speedy trial, and I will enter an order to that
18 effect.

19 MS. ECHENBERG: Your Honor, at the last conference I
20 believe you excluded time May 24, 2014 the trial.

21 THE COURT: Anything else from defense?

22 MR. FOGG: No, your Honor.

23 THE COURT: Again, I will again continue as I have
24 allowed the defense to waive Mr. Ceglia's personal presence in
25 court and allow Mr. Ceglia to appear by telephone to reduce the

EanQcegC

1 travel expenses.

2 Also for the record, I think what counsel said, I
3 excluded time before. You may have misspoke and said May 2014.
4 It's obviously May 2015.

5 (Adjourned)